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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 19

Application Number: 09/883,279
Filing Date: June 19, 2001
Appellant(s): TANAKA, SHINOBU

Allison M. Tulino
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 14, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1 and 2 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The second switching state is first said to enable lifting and lowering of the forks of a forklift truck. See the passage starting on line 10 starting with " that lifts..." and ending on line 11 with " in a second switching state". The next passage of the claim states that the lifting and lowering of the fork is not enabled while the switch is in the second switching state. Since the specification is not enabling for the second switching state to both enable and disable the lifting and lowering of the forks, it is not possible for the examiner to determine the intended scope of the claim. Claim 2 is also rejected as being dependent upon an unenabled claim. As the scope of claim 1 is not able to be determined at this time, the scope of claim 2 is also unable to be determined as well.

(11) Response to Argument

In response to the assertion by the appellant that the examiner has misconstructed claim 1, the relevant portions of claim 1 are presented again as two sections which form the basis of the final rejection of the claim.

"a controller that tilts said mast when said operating lever is tilted and said switch is in a first switching state, that lifts or lowers said fork when operating lever is tilted and said switch is in a second switching state"

"and that prevents lifting and lowering of said fork when said switch is changed from said first switching state to said second switching state while said operating lever is tilted".

In the construction of claim 1 as read by the examiner the second switching state of said switch is first said to enable movement of the forks when the operating lever is tilted, and then in the second switching state is said to inhibit the movement of those same forks when the lever is tilted. These two limitations as written contradict each other and are not supported by the specification. The pertinent passages from pages 4 and 5 of the specification are presented below.

"When the operating lever 3 is singly operated, an output of the potentiometer 10 which is proportional to the tilting angle of the operating lever 3 is supplied to a controller 7. The degree of opening of first solenoid proportional control valve 61 is controlled by an output control signal supplied from the controller 7, thereby controlling the lifting and lowering speeds of the fork 5. In contrast, when the operating lever 3 is operated while the switch 9 is kept to be operated, the output of the potentiometer 10 which is proportional to the tilting angle of the operating lever 3 is supplied to the controller7. The degree of opening of a second solenoid proportional control valve 62 is controlled by an output control signal supplied from the controller 7 thereby controlling the tilting speed of the mast 4. The controller 7 receives an output of the rotational

amount detector 10, and an electric signal of the pushbutton switch 9, and converts them into electric signals of signals are supplied desired frequency. The converted electric signals are supplied to a solenoid proportional control valves 61 and 62 , to obtain degrees of opening which are proportional to the tilting angle of the operating lever 3. As a result, actions of lifting and lowering the fork 5, and tilting the mast 4 are conducted at respective predetermined speeds.

The controller 7 configured in the following manner. When the operating lever 3 is operated while the switch 9 is kept operated, the action of tilting the mast 4 is obtained. When the switch 9 is released during this operation, an inhibiting circuit 72 shown in figure 3 is activated so as to block the pulse generation in a pulse generating circuit 73, thereby stopping the tilting action lowering action. When the mast and lifting once returned to a neutral position, the inhibiting condition of the inhibiting circuit 72 which has been activated is cancelled, so as to attain a state where pulses generated by the pulse generating circuit are enabled to be applied to solenoid proportional control valve driving circuit 11.

These passages clearly show that the term "switching states" apply to the overall control system (reference numeral 7) and not the position of the switch as asserted by the appellant. The first distinct switching state is when the operating lever is tilted while being singly operated (the button is not pushed). A second switching state where the operating lever is tilted and the button is pushed thereby generating an electrical signal. And lastly a third switching state where the button is initially pushed and subsequently released during tilting of the operating lever. The appellant has clearly shown three

distinct switching states for the control system and as such the specification is not enabled for the second switching state to both allow and inhibit the mast and forks from moving. When appellant introduced the term switching state into the claim it is taken to represent the state of the control system and not the position of the button per se.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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April 5, 2004

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